

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





# 76-1457

To be argued by  
JONATHAN J. SILBERMANN

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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UNITED STATES OF AMERICA,  
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Plaintiff-Appellee,  
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-against-  
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PAUL WILLIAMS,  
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Defendant-Appellant.  
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*B*  
*PAS*  
Docket No. 76-1457

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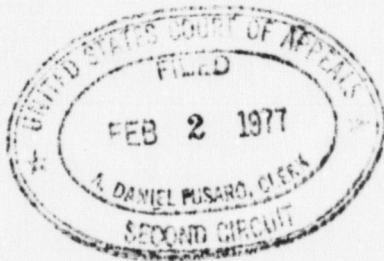
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APPENDIX TO APPELLANT'S BRIEF

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ON APPEAL FROM A JUDGMENT  
OF THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK



WILLIAM J. GALLAGHER, ESQ.,  
THE LEGAL AID SOCIETY  
Attorney for Appellant  
PAUL WILLIAMS  
FEDERAL DEFENDER SERVICES UNIT  
509 United States Court House  
Foley Square  
New York, New York 10007  
(212) 732-2971

JONATHAN J. SILBERMANN  
Of Counsel.

PAGINATION AS IN ORIGINAL COPY



## COURT - CRIMINAL DOCKET

GE/ Assigned Trial  
 STRATE 0721  
 07/1 Disp./Sentence  
 District Office

U.S.

76 CR 130

PAUL WILLIAMS

defendant

Case Filed  
 Day Mo. Yr.  
 27 2 76  
 No. of Defendants 2

Docket  
 150

CRIMINAL  
 A

21-841(a)(1)  
 18-2

Did possess with intent to  
 distribute and did distribute heroin

6

(s) 21:841(a)(1)

Did possess with intent to distribute  
 cocaine hydrochloride

4

U.S. District Court  
 V. Rocco

MAGR. CASE NO. 75M1500  
 BAIL & RELEASE

☐ Personal Recog.  
☒ Denied ☐ Unsecured Bond  
☐ Conditional Release  
 Set (000) \$10  
 9 1975  
☐ Bail Not Made  
☐ Bail Status Changed (See Docket)  
☐ 10% Deposit  
☐ Surety Bond  
☐ Collateral  
☐ 3rd Party Custody  
☐ PSA

## ARREST

9-9-75 or  
 U.S. Custody  
 Began on Above  
 Charges

☐ High Risk  
 Defn. &  
 Date Design'd

## INDICTMENT

Information ☐  
 2-27-76

Waived ☐

Superseding  
☒ Indict/Info ☐  
 5/18/76

## ARRAIGNMENT

3/2/76

1st Plea A

Final Plea

Trial Set For. 5-12-76

☒ Not Guilty  
☐ Nolo  
☐ Guilty  
☐ Not Guilty  
☐ Nolo  
☐ Guilty

## TRIAL

Voor Dire ☐

Trial Began 5/15/76

Trial Ended 7/16/76

## SENTENCE

Disposition 10/1/76

☒ Convicted ☐ On All Charge  
☐ Acquitted ☐ On Lesser Offense(s)  
☐ Dismissed: ☐ WOP; ☐ WP  
☐ Nollo/Discontinued\*

☐ Prosecution Deferred

Search Warrant

Issued  
 Return

DATE

INITIAL/No.

INITIAL APPEARANCE

INITIAL/No.

OUTCOME

Summons

Issued  
 Served

Arrest Warrant 9-9-75 MS /070B

COMPLAINT

II

II

Tape No.

INITIAL/No.

☐ Dismissed  
☐ Held for District GJ  
☒ Held to Answer to U. S. District Court

☐ Exonerated  
☐ To Transferee District

AT: ED NY

Magistrate's Initials

OFFENSE  
(In Complaint)

Possession with intent to distribute heroin(one ounce)

\* Show last names and suffix numbers of other defendants on same indictment/information

WHITE 2

DATE

PROCEEDINGS

V. Excludable Delay

(a) (b) (c) (d)

2-27-76 Before BARTELS, J - Indictment filed  
 3-2-76 Before BRAMWELL, J - case called - deft & counsel S.Chrein present - deft arraigned and waives reading of indictment and enters a plea of not guilty - 30 days for motions - case adjd to May 12, 1976 for trial. Bail contd  
 3-3-76 Notice of Readiness for Trial filed  
 5-12-76 Before BRAMWELL, J - case called - deft & counsel present - case adjd to May 26, 1976 for trial  
 5/18/76 Before PLATT, J.- SUPERSEDING INDICTMENT FILED  
 5/26/76 Before BRAMWELL, J.- Case called- deft and counsel present deft arraigned and enters a plea of not guilty-case adjd to 6/3/76 at 10:00 A.M. for trial- bail contd  
 6/3/76 Before BRAMWELL, J.- Case called- deft not present- counsel Edward Kelly of Legal Aid present- case adjd to 6/21/76 at 10:00 A.M. for trial  
 6-21-76 Before BRAMWELL, J - case called - deft & counsel EKelly present - adjd to July 12, 1976 for trial  
 7/12/76 Before BRAMWELL, J. - Case called. Deft & Counsel Edward Kelly of Legal Aid present. Trial ordered. Selection of jurors begun. Court excused 4 for Court. Trial adjourned to July 14th, 1976 at 10:00 a.m.

DATE	IV. PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7/14/76	Before BRAMWELL, J. - Case called. Deft & Counsel present. Trial resumed. Trial continued to 7/15/76 at 11:00 a.m.				
7-15-76	Before BRAMWELL, J - case called - deft & counsel Edw. Kelly present - trial resumed - Trial contd to 7-16-76 at 2:00 PM.				
7/16/76	Before BRAMWELL, J. - Case called. Deft & Counsel present. Trial resumed. Jury rendered a verdict of guilty on Counts 1, 2, 5, & 6. Jury polled. Jury discharged. Defts motion to set aside verdict etc. - Motion denied. Deft ordered to report to Probation Dept on 7/19/76 at 10:00 a.m. Bail continued & sentence adjourned without date. Trial concluded.				
10/1/76	Before BRAMWELL, J.- Case called. Deft & Counsel present. Deft sentenced to imprisonment for a period of 10 years on Count 1 plus a Special Parole Term of 7 years, and on Cts 2, 5, & 6 deft is sentenced to imprisonment for a period of 10 yrs plus a Special Parole Term of 7 years. Counts 2, 5, & 6 are to run concurrent with each other and concurrent with sentence imposed in Count 1. Bail continued pending appeal. Deft advised of his right to appeal in forma pauperis. On motion of AUSA Victor Rocco, the original indictment is dismissed.				
10/1/76	Judgment & Commitment filed. Certified copies to Marshals and Probation.				
10/5/76	Notice of Appeal filed.				
10/5/76	Docket entries and duplicate of Notice of Appeal filed and sent to Court of Appeals.				
10-21-76	Order received from the court of appeals that the Record on appeal be filed on or about November 18, 1976.				
11-15-76	Five (5) Stenographer's Transcript dated May 26, 1976; July 14, 1976; July 15, 1976; July 16, 1976 and Filed.				
<div data-bbox="740 1408 1164 1618" data-label="Text"> <p>             A 100              11/16/76  <i>[Signature]</i>              EX-100           </p> </div>					
		(a)	(b)	(c)	(d)
		Interval (per Section II)	Start Date End Date	Ltr. Code	Total Days



TRP:VJR:ald  
F.# 761,677

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D. N.Y.  
★ MAY 18 1976 ★  
TIME A.M. ....  
P.M. ....

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

SUPERSEDING INDICTMENT

- against -

PAUL WILLIAMS and  
DAVID WHITE,

Cr. No. 76 CR 150 (S)  
(Title 21, U.S.C. §841(a)(1);  
Title 18, U.S.C. §2)

Defendants.

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THE GRAND JURY CHARGES:

COUNT ONE

On or about the 10th day of July, 1974, within the Eastern District of New York, the defendants, PAUL WILLIAMS and DAVID WHITE, knowingly and intentionally did possess with intent to distribute approximately 91.7 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a); Title 18 United States Code, Section 2).

COUNT TWO

On or about the 10th day of July, 1974, within the Eastern District of New York, the defendants, PAUL WILLIAMS and DAVID WHITE, knowingly and intentionally did distribute approximately 91.7 grams (net weight) of cocaine hydrochloride, a Schedule II narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

COUNT THREE

On or about the 21st day of May, 1974, within the Eastern District of New York, the defendant, DAVID WHITE, knowingly and intentionally possessed with intent to distribute approximately 15.78 grams (net weight) of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

COUNT FOUR

On or about the 21st day of May, 1974, within the Eastern District of New York, the defendant, DAVID WHITE, knowingly and intentionally did distribute approximately 15.78 grams (net weight) of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1)).

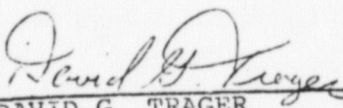
COUNT FIVE

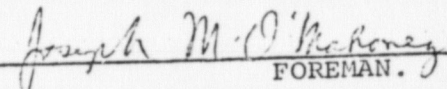
On or about the 19th day of April, 1974, within the Eastern District of New York, the defendants, PAUL WILLIAMS and DAVID WHITE, knowingly and intentionally did possess with intent to distribute approximately 28.4 grams (net weight) of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

COUNT SIX

On or about the 19th day of April, 1974, within the Eastern District of New York, the defendants, PAUL WILLIAMS and DAVID WHITE, knowingly and intentionally did distribute approximately 28.4 grams (net weight) of heroin hydrochloride, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2).

A TRUE BILL.

  
\_\_\_\_\_  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

  
\_\_\_\_\_  
FOREMAN.



No. \_\_\_\_\_

UNITED STATES DISTRICT COURT

EASTERN District of NEW YORK

Division

THE UNITED STATES OF AMERICA

vs.

PAUL WILLIAMS and DAVID WHITE,

Defendants.

## INDICTMENT

(T. 21, U.S.C. §841(a)(1);  
T. 18, U.S.C. §2)

A true bill,

Foreman.

Filed in open court this \_\_\_\_\_ day  
of \_\_\_\_\_, A. D. 19\_\_\_\_

Clerk.

Bail, \$\_\_\_\_\_

V.J. ROCCO, AUSA 596-3415 <sup>U.P.O. 902-482</sup>

Charge

Ladies and gentlemen, the evidence is clear, you saw the witnesses, you heard them testify, you followed their testimony closely. It wasn't a lengthy trial and, as Mr. Kelly has indicated to you, it's important to you the jurors, it's important to the Government and it's important to the defendant Paul Williams. The decision must be made based on the evidence that you saw adduced here at trial, and I commend you for that, ladies and gentlemen; and again, I mentioned to you the most valuable resources your common sense and life experience in appraising that evidence.

The evidence, I submit to you, consists of the theory or the fact that Paul Williams is guilty on each and every count in the indictment. Paul Williams met with Detective Pons on two occasions, on April 19, 1974, on that occasion sold him an ounce of heroin; he met with Detective Pons on a second occasion, on July 10, 1974, and on that occasion sold him three ounces of cocaine. Thank you, Ladies and Gentlemen.

THE COURT: I'm going to charge the jury. If anyone wishes to leave they may do so now. They may not leave during the charge.



## Charge

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2 Ladies and gentlemen, the case was short, the  
3 charge itself contains the law that the Court must  
4 charge the jury in connection with this particular  
5 case. I ask that you be patient and give the Court  
6 your indulgence so that the Court may give you the  
7 law that you are required to have in this case.

8 Mr. Foreman, ladies and gentlemen of the jury:

9 We now come to the final stage of the proceed-  
10 ings. The Court will now charge you on the law to  
11 be applied to the facts in the case.

12 As you may recall, I initially gave you a  
13 precharge as to the manner in which the case would  
14 be presented to you. I told you that most of the  
15 evidence in the case would come in the form of the  
16 testimony of witnesses, and that you were to pay  
17 special attention to the manner in which the witnesses  
18 testified.

19 I believe I also instructed you that you would  
20 be the judges of the facts in the case, that being  
21 your sole province; that your recollection of the  
22 facts after having heard all of the evidence in the  
23 case, the testimony of witnesses and the documentary  
24 proof, was to control the determination of the issues.

25 Likewise at that time I told you that I would

Charge.

be the judge of the law. This has not changed at this stage of the proceedings. I will not review the facts in this case for you because I am certain that with summations by the attorneys there is no need for the Court to review the facts. In any event, if you find that there is some fact in the case that you may have forgotten or don't recollect, or you can't agree with each other in your deliberations, you can have it read back from the record, and that will, I am sure, refresh your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

Now, the attorneys have been permitted by the Court and by the rules to make opening statements and summations to you.

Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence. However, the Court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments. And if you agree with what they have said on either side of the case you may use those arguments in your deliberations, and in discussing the case with each other, and try to convince one another as to what the



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Charge

final determination shall be with reference to the deliberations at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed, and you may discuss that portion of it if you so desire.

Now, of course, I also said to you that during the trial the Court will be the judge of the law. Likewise, as to motions which at times we've had at a sidebar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you. In any event, if you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your mind because I tell you here and now I have come to no conclusion in this case, nor have I indicated to you in any way whatsoever what my feeling

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"Charges - Issues"

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is with reference to the facts in the case or with reference to the guilt or innocence of the defendant. That is your province and your job. You should not try to weigh what you believe the Court's impression may be.

You must understand that the lawyers who appear before you are advocates. They are advocating the best case they can for the parties they represent and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I say this because this is within the framework of the ordinary trial.

Objections and rulings.

It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections.

Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence. As stated before, the jurors are the sole judges of



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§ 2100-1000

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2 the credibility of all witnesses and the weight and  
3 effect of all evidence.

4 When the Court has sustained an objection to  
5 a question addressed to a witness the jury must  
6 disregard the question entirely, and they draw no  
7 inference from the wording of it, or speculate as to  
8 what the witness would have said if he had been  
9 permitted to answer any question.

10 In determining the facts, the jury is reminded  
11 that before each member was accepted and sworn to act  
12 as a juror, he was asked questions regarding his  
13 competency, qualifications, fairness and freedom from  
14 prejudice or sympathy. On the face of those answers  
15 the juror was accepted by the parties. Therefore,  
16 those answers are as binding on each of the jurors  
17 now as they were then and should remain so until the  
18 jury is discharged from consideration of this case.

19 You cannot decide that you do not like the  
20 sections of the law that I will quote to you or any  
21 other part of the charge. You have the obligation of  
22 accepting the law as I charge it, just as I have the  
23 obligation of accepting your findings of fact in your  
24 ultimate verdict as to the guilt or innocence of the  
25 defendant as to each charge.

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Charge - Hargrove

It lends for predictability and stability if judges throughout the country in types of charges such as this, charge uniformly or substantially so and that juries accept it. It would be unfair for you to decide this case on your own notions on what the law should be, and another jury decided on their own notions and what the law should be.

That is why the obligation is a firm one and one that you should understand.

Of course you know by this time that this case has come before you by way of an indictment presented by a Grand Jury sitting in this Eastern District. That indictment charges the defendant with the counts I shall now read to you. Remember the indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything.

The indictment reads as follows:

Now, I might say in connection with the indictment, the indictment includes David White as a defendant and further in connection with the trial of this case there was testimony as to one Lance Hargrove. Now, as to David White and Lance Hargrove, the jury is to draw no presumptions and no inferences by virtue of the fact that they are not on trial at this time.



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This case that you are to deliberate on involves only Paul Williams as a defendant; no presumption or inferences are to be drawn as to the other parties.

Now, count one.

On or about the 10th day of July, 1974, within the Eastern District of New York, the defendants Paul Williams and David White, knowingly and intentionally did possess with intent to distribute approximately 91.7 grams (net weight) of cocaine hydrochloride, a Schedule 2 narcotic drug controlled substance in violation of Title 21, United States Code, Section 841(a); Title 18 United States Code, Section 2.

Count two.

On or about the 10th day of July, 1974, within the Eastern District of New York, the defendants Paul Williams and David White, knowingly and intentionally did distribute approximately 91.7 grams (net weight) of cocaine hydrochloride, a Schedule 2 narcotic drug controlled substance in violation of Title 21, United States Code, Section 841(a)(1); Title 18, United States Code, Section 2.

Count five.

On or about the 19th day of April, 1974, within the Eastern District of New York, the defendants Paul

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Williams and David White, knowingly and intentionally did possess with intent to distribute approximately 28.4 grams (net weight) of heroin hydrochloride, a Schedule 1 narcotic drug controlled substance in violation of Title 21 United States Code, Section 841(a) (1); Title 18 United States Code Section 2.

Count six.

On or about the 19th day of April, 1974, within the Eastern District of New York, the defendants Paul Williams and David White, knowingly and intentionally did distribute approximately 28.4 grams (net weight) of heroin hydrochloride, a Schedule 1 narcotic drug controlled substance in violation of Title 21 United States Code, Section 841(a) (1); Title 18, United States Code, Section 2.

Now, I'll give you some general introductory remarks regarding the statutes applicable to counts one and five in this case.

The individual counts numbered one and five of this indictment are both based on the very same sections of the very same two statutes which I will read for you in a few moments, to wit, Title 21 of the United States Code, Section 841(a) (1) and Title 18 of the United States Code, Section 2.



Charge  
Distribution - 10000

Let me emphasize this to you for it is of crucial importance, although the counts numbered one and five are based on the very same sections of the very same statutes, each count charges a separate offense occurring on or about a different time and involving a different narcotic drug controlled substance.

Therefore, each count should be carefully, seriously and separately and individually considered by you as such.

I will now read for you the applicable rule governing the separate and individual counts numbered one and five.

Please apply this law to each of the aforementioned counts separately and individually. In each case ask yourselves in applying the law to each factual transaction set out in the individual counts, numbered one and five, has the Government met its burden of proof as to each such count when considered separately and individually.

Counts one and five of the indictment are based on Title 21 of the United States Code, Section 841(a)(1) and Title 18 of the United States Code, Section 2.

Title 21 of the United States Code, Section 841(a) (1) provides in pertinent part as follows:

"It shall be unlawful for any person knowingly or intentionally to possess with intent to distribute a controlled substance."

You are instructed as a matter of law in considering count one of the indictment that cocaine is a controlled substance.

In considering count one of the indictment that cocaine is a controlled substance.

In considering count five of the indictment you are instructed as a matter of law that heroin is a controlled substance.

As I have previously advised you both counts one and five of the indictment are also based on Title 18 of the United States Code, Section 2.

Now, in a case where two or more persons are charged with the commission of a crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

Section 2 of Title 18 of the United States deals with the aiding and abetting of the commission of an offense against the laws of the United States.



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## Charge

Section 2 provides in pertinent part as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal."

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

"Aid and abet" - defined.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associated himself in some way with the criminal venture and willfully participate in it as he would in something he wishes to bring about; that is to

Charge  
~~Subsection - 3000~~

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say that he willfully seek by some act or omission of his to make the criminal venture succeed.

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An act or omission is "Willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or to disregard the law.

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You of course may not find any defendant guilty unless you find beyond reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

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"Willfully" to cause criminal act - defined.

In order to cause another person to commit a criminal act, it is necessary that the accused willfully do, or willfully fail to do, something which, in the ordinary performance of official duty, or in the ordinary course of the business or employment of such person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.



Charge  
 Solicitor General

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An act or a failure to act is "Willfully" done, if done voluntarily and intentionally, and with the specific intent to do something that the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

"Mere presence" not sufficient.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime, unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions: Did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by his action to make it succeed? If he did, then he is a aider and abettor.

"Essential elements of the offense"

Count one of the indictment charges that the defendant, Paul Williams, did knowingly and

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~~Charge - Verbs~~  
Charge

intentionally possess with intent to distribute cocaine, a Schedule 2 narcotic drug controlled substance.

The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt:

First: That the defendant, Paul Williams, possessed cocaine, a Schedule 2 narcotic drug controlled substance, on or about the 10th day of July, 1974, within the Eastern District of New York; and

Second: That the defendant, Paul Williams, did so possess with a specific intent to distribute cocaine, a Schedule 2 narcotic drug controlled substance; and

Third: That the defendant, Paul Williams, did so knowingly and intentionally.

"Essential elements of the offense"

Count five of the indictment charges that the defendant, Paul Williams, did knowingly and intentionally possess with intent to distribute heroin, a Schedule 1 narcotic drug control substance.

The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt are:



## Charge

First: That the defendant Paul Williams, possessed heroin a Schedule I narcotic drug controlled substance on or about the 19th day of April, 1974, within the Eastern District of New York; and

Second: That the defendant, Paul Williams, did so possess with a specific intent to distribute heroin, a Schedule narcotic drug controlled substance and

Third: That the defendant, Paul Williams did so knowingly and intentionally.

You are reminded that in considering each of the essential elements of the crime charged in counts one and five of the indictment, that whoever aids, abets, counsels, commands, induces or procures the commission of an offense against the laws of the United States is punishable as a principal. In order to aid or abet the commission of an offense against the laws of the United States, a person must associate himself with the criminal venture, participate in it and try to make it succeed.

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged.

Always remember that the law never imposes

18 1

## Charge

2 upon a defendant in a criminal case the burden or  
3 duty of calling any witnesses or producing any evidence.

4 "General introductory remarks regarding the  
5 statutes applicable to counts two and six in this  
6 case".

7 The individual counts numbered two and six of  
8 this indictment are both based on the very same two  
9 statutes which I will read for you in a few moments,  
10 to wit, Title 21 of the United States Code Section  
11 841(a) (1) and Title 18 of the United States Code,  
12 Section 2.

13 Let me emphasize this to you for it is of  
14 crucial importance, although the counts numbered two  
15 and six are based on the very same sections of the  
16 very same statutes, each count charges a separate  
17 offense occurring on or about a different time and  
18 involving a different narcotic drug controlled sub-  
19 stance.

20 Therefore, each count should be carefully,  
21 seriously and separately and individually considered  
22 by you as such.

23 I will now read for you the applicable law  
24 governing the separate and individual counts number  
25 two and six. Please apply this law to each of the



## Charge

19  
2       aforementioned counts separately and individually.  
3       In each case ask yourselves, in applying the law to  
4       each factual transaction set out in the individual  
5       counts, number two and six, has the Government met  
6       its burden of proof as to each such count when con-  
7       sidered separately and individually?

8               Counts two and six of the indictment are based  
9       on Title 21 of the United States Code, Section 841(a)(1)  
10      and Title 18 of the United States Code, Section 2.

11             Title 21 of the United States Code, Section  
12      841(a)(1) provides in pertinent part as follows:

13             "It shall be unlawful for any person knowingly  
14      or intentionally to distribute a controlled substance".

15             You are instructed as a matter of law in con-  
16      sidering count two of the indictment that cocaine is  
17      a controlled substance.

18             In considering count six of the indictment, you  
19      are instructed as a matter of law that heroin is a  
20      controlled substance.

21             As I have previously advised you, both counts  
22      two and six of the indictment are also based on Title  
23      18 of the United States Code, Section 2.

24             As I previously indicated to you, in a case  
25      where two or more persons are charged with the commission

Charge

of a crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

To facilitate your understanding, I will reread Section 2 of Title 18 of the United States Code which deals with the aiding and abetting of the commission of an offense against the laws of the United States. Section 2 provides in pertinent part as follows:

"Whoever commits an offense against the United States, or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal".

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States is punishable as a principal".

As I previously explained to you, in other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense. Participation is willful if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law



## Charge

requires to be done; that is to say, with bad purpose either to disobey or disregard the law.

It is very important that I once again go over with you certain important definitions.

"Aid and abet" - defined.

In order to aid and abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture, and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is "Willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

You of course may not find any defendant guilty unless you find beyond reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons, and that the defendant participated in its commission.

"Willfully to cause criminal act" - defined.

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In order to cause another person to commit a criminal act, it is necessary that the accused willfully do, or willfully fail to do, something which, in the ordinary performance of official duty, or in the ordinary course of the business or employment of such other person, or by reason of the ordinary course of nature or the ordinary habits of life, results in the other person's either doing something the law forbids, or failing to do something the law requires to be done.

An act or a failure to act is "Willfully" done if done voluntarily and intentionally, and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

"Mere presence" not sufficient.

Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime unless you find beyond reasonable doubt that the defendant was a participant and not merely a knowing spectator.

Therefore, as I have previously instructed you -



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To determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions: Did he associate himself with the venture? Did he participate in it as something he wished to bring about? Did he seek by that to make it succeed? If he did, then he is an aider and abettor.

"Essential elements of the offense".

Count Two of the indictment charges that the defendant, Paul Williams, did knowingly and intentionally distribute cocaine, a Schedule 2 narcotic drug controlled substance.

The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt are:

First: That the defendant did distribute cocaine, a Schedule 2 narcotic drug controlled substance, on or about the 10th day of July, 1974, within the Eastern District of New York; and

(Continued on next page.)

TR6

## Charge

Paragraph Second: That the defendant did so distribute the cocaine knowingly and intentionally, on or about the 10th day of July, 1974, within the Eastern District of New York.

## "Essential Elements of the Offense"

Count six of the indictment charges that the defendant, Paul Williams, did knowingly and intentionally distribute heroin, Schedule 1 Narcotic Drug Control Substance.

The essential elements of this offense, each of which the Government must prove beyond a reasonable doubt:

First: That the defendant did distribute heroin a schedule 1 Narcotic Drug Control substance on or about the 19th day of April, 1974, within the Eastern District of New York; and

Paragraph Second: That the defendant did so distribute the heroin knowingly and intentionally, on or about the 19th day of April, 1974, within the Eastern District of New York.

You are reminded that in considering each of the essential elements of the crime charged in Counts Two and Six of the indictment, that whoever aids, abets, counsels, commands, induces or procures the



## Charge

commission of an offense against the laws of the United States is punishable as a principal. In order to aid or abet the commission of an offense against the laws of the United States, a person must associate himself with the criminal venture, participate in it, and try to make it succeed.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

Ladies and gentlemen, you will note the indictment charges in each count that the offense was committed "On or about" a certain date. The proof need not establish with certainties the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near to the date alleged.

"Acts and Declarations of Co-Conspirators"

Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that a defendant was one of the members

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2 then the statements thereafter knowingly made and  
3 the actsthereafter knowingly done, by any person like-  
4 wise found to be a member, may be considered by the  
5 jury asevidence in the case as to the defendants  
6 found to have been a member, even though the state-  
7 ments andacts may have occurred in theabsence and  
8 without the knowledge of the defendant, provided such  
9 statements and acts were knowingly made and done  
10 during the continuance of such conspiracy, and in  
11 furtherance of some object or purpose of the con-  
12 spiracy.

13 Such evidence is admissible against a defendant  
14 found to be a member of a conspiracy, whether or not  
15 a conspiracy is actually charged in the indictment.

16 Therefore, you the jury must determine whether  
17 or not the Government has proven a conspiracy between  
18 Paul Williams and David White and LanceHargrove named  
19 in the indictment who allegedly made statements  
20 during the course of and in furtherance of the  
21 conspiracy. If you find such a conspiracy existed,  
22 such statements by other co-conspirators made during  
23 the course of and in furtherance of the conspiracy  
24 would be admissible as against Paul Williams.

25 If you do not find beyond a reasonable doubt



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2 that such conspiracy existed, you may not consider  
3 such evidence as against the defendant, Paul Williams.

4 That is to say, any admission or incriminatory  
5 statement made by one person may not be considered by  
6 you as evidence against the defendant who was not present  
7 and did not hear the statement made, or see the act  
8 done, unless you find that the declarant of the state-  
9 ment and the defendant were engaged together in a  
10 conspiracy.

11 Therefore, you the jury, must determine whether  
12 or not a conspiracy existed between Paul Williams and  
13 either David White or Lance Hargrove to violate the  
14 narcotics laws of the United States, that is by knowingly  
15 and intentionally conspiring to commit either the  
16 offense of knowingly and intentionally distributing  
17 or the offense of knowingly and intentionally possess-  
18 ing with intent to distribute the narcotic drug  
19 control substances named in each particular count  
20 of the indictment.

21 "Conspiracy Defined - Proof of Existence"

22 A conspiracy is a combination of two or more  
23 persons, by concerted action, to accomplish some  
24 unlawful purpose or to accomplish some lawful  
25 purpose by unlawful means. So, a conspiracy is a

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kind of "Partnership in Criminal Purposes", in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard the law.

Here similarity of conduct among various persons, and the fact they may have associated with each other, and may have assembled together and discussed names and interest, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the names by which the object or purpose was to be accomplished. What the evidence in the case must show beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner or through some contrivance, expressly or tacitly, came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the indictment



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2 were agreed upon to carry out the alleged conspiracy;  
3 nor that all means or methods, which were agreed upon,  
4 were actually used. All put into operation; nor that  
5 all of the persons charged to have been members of  
6 the alleged conspiracy were such. What the evidence  
7 in the case must establish beyond a reasonable doubt  
8 is that the alleged conspiracy was knowingly formed by  
9 two or more persons, including the accused.

## "Proof of Membership and Conspiracy"

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11 When they become a member of a conspiracy with-  
12 out full knowledge of all the details of the conspiracy.  
13 On the other hand, a person who has no knowledge of a  
14 conspiracy, but happens to act in a way which furthers  
15 some object or purpose of the conspiracy, does not  
16 thereby become a conspirator.

17 Before the jury may find that a defendant, or  
18 any other person has become a member of a conspiracy,  
19 the evidence in the case must show beyond a reasonable  
20 doubt that the conspiracy was knowingly formed, and  
21 that the defendant, or other person who has claimed  
22 to have been a member, willfully participated in the  
23 unlawful plan, with the intent to advance or serve  
24 some object or purpose of the conspiracy.

25 To act or participate willfully means to act

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or participate voluntarily and intentionally, and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant, a conspirator.

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One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

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In determining whether a conspiracy existed, the jury should consider the actions and declarations of all of the alleged participants. However, in determining whether a particular individual was a member of the conspiracy, the jury should consider only his acts and statements. He cannot be bound by the acts or declarations of other participants until it is established that a conspiracy existed beyond a reasonable doubt, and that he was one of its



## Charges

members.

"Essential Elements of Conspiracy"

It is not necessary in order for the Government to prove its case of a conspiracy to violate the narcotics law, that there be proof of actual dealings in narcotics.

The essential elements of a conspiracy, each of which the Government must prove beyond a reasonable doubt:

First: That two or more people were involved since a conspiracy requires an agreement;

Second: That the purpose of the agreement was to possess with intent to distribute and to distribute quantities of cocaine, a schedule two narcotics drug controlled substance or quantities of heroin, a schedule 1 narcotic drug control substance.

Third: That the conspiracy was willfully formed, and was existing at the time alleged, namely, on or about the 10th day of July, 1974 or on or about the 19th day of April, 1974; and

Fourth: That the defendant, Paul Williams knowingly, intentionally and wilfully became a member of the conspiracy.

If the jury should find beyond a reasonable doubt

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all of the evidence in the case that the existence of the conspiracy and the defendant's participation in it has been proven beyond a reasonable doubt, then proof of the conspiracy offense is complete.

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And as I have previously instructed you--

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Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed, and that the defendant was one of the members, then the statements thereafter knowingly made and the acts thereafter knowingly done, by any person likewise found to be a member may be considered by the jury as evidence in the case as to the defendant found to have been a member, even though the statements and acts may have occurred in the absence and without the knowledge of the defendant, provided such a statement and acts were knowingly made and done during the continuance of such conspiracy, and in furtherance of some object or purpose of the conspiracy. This is true even though the conspirators may not have succeeded in accomplishing their common purpose and in fact may have failed of so doing. Otherwise, any admission or incriminatory statement made or acts done outside of court by one person, may not be considered as evidence against any person who was not present



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and did not hear the statement made, or see the act done.

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Therefore, statements of any conspirator, which are not in furtherance of the conspiracy, or made before its existence, or after its termination, may be considered as evidence only against the person making them.

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Please bear in mind the following definitions in considering the essential elements of the crimes charged.

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## "Distribute" defined.

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The term "Distribute" means to deliver a narcotic drug control substance to the possession of another person, which in turn means the actual, constructive, or attempted transfer of a narcotic drug controlled substance.

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## "Definition of Possession"

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The law recognizes two kinds of possession; actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time, is then in actual possession of it.

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A person who, although not in actual possession, knowingly has the power at a given time to exercise dominion or control over a thing, is then in constructive

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possession of it.

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The law recognizes also that possession may be sole or joint. If one person has actual or constructive possession of a thing possession is sole. If two or more persons share actual or constructive possession of a thing, their possession is joint. If you find from the evidence beyond a reasonable doubt that the defendant, either alone or with others had actual or constructive possession of the narcotic drug described in the particular count of the indictment, then you may find that the narcotic drug was in the possession of defendant within the meaning of the word "Possession" as used in these instructions. Actually manual or person possession is not a necessary element of the crime. It is sufficient if the possession is constructive, if merchandise is shown to be under the control of the person charged though in actual physical possession of another. The Government does not have to prove that the narcotics drug was possessed by the defendant for any particular length of time.

"Knowingly"

An act is done knowingly if done voluntarily and intentionally and not because of mistake or accident



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or other innocent reason.

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The purpose of adding the word "Knowingly" was to insure that no one would be convicted for an act done because of mistake or accident, or other innocent reason.

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An act is done wilfully if done voluntarily and intentionally, and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disregard the law.

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"Definition of Specific Intent"

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This is applicable to all offenses charged in the indictment.

The crimes charged in this case are serious crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act. To establish specific intent, the Government must prove that a defendant knowingly did an act with which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may be proved directly, because there is no way of fathoming or scrutinizing

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13 1 the operations of the human mind. But you may infer  
2 the defendant's intent from the surrounding circum-  
3 stances. You may consider any statement made and  
4 act done or omitted by a defendant, and all other  
5 facts and circumstances in evidence which indicate  
6 his state of mind. It is ordinarily reasonable to  
7 infer that a person intends the natural and probable  
8 consequences of acts knowingly done or knowingly  
9 omitted.  
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## Reasonable Doubt.

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12 Now, there are in any case, and in this one,  
13 two types of evidence from which a jury may properly  
14 find a defendant guilty of a crime, one is direct  
15 evidence such as testimony of an eyewitness, the other  
16 is circumstantial evidence, which is proof of a chain  
17 of facts and circumstances pointing to the commission  
18 of the offense.

19 As a general rule, the law makes no distinction  
20 between direct and circumstantial evidence, but simply  
21 requires that before convicting a defendant the jury  
22 must be satisfied of the defendant's guilt beyond a  
23 reasonable doubt from all the evidence in the case.

24 A defendant is presumed innocent of the crime.  
25 Thus the defendant, although accused, begins the trial



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with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against the accused, so that the presumption of innocence alone is sufficient to acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's guilt after careful and impartial consideration from all the evidence in the case.

It is not required that the Government prove guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is based upon reason and common sense, the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt must, therefore, be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You, the jury will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of call-

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ing any witnesses or producing any evidence.

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So, if the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, you, the jury, should, of course, adopt the conclusion of innocence.

I have said that the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Also circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make commonsense inferences from the proven facts.

It is not necessary that all inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence. The test is one of reasonable doubt, and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved.



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## "Proof of Knowledge and Intent"

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You are to consider only the evidence in this case. But in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw, from the facts which you find have been proved, such reasonable inferences as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused guilty beyond a reasonable doubt very essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

Knowledge and intent exists in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question. Direct proof is unnecessary. Knowledge

## Charge

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2 and intent may be inferred from all the surrounding  
3 circumstances.

4 As far as intent is concerned, you are instructed  
5 that a person is presumed to intend the natural and  
6 probable, or ordinary, consequences of his act.

## Credibility of Witnesses.

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8 You as jurors are the sole judges of the credib-  
9 ility of the witnesses and the weight their testimony  
10 deserves and it goes without saying that you should  
11 scrutinize all the testimony given, the circumstances  
12 under which each witness has testified, and every  
13 matter in evidence which tends to show whether a wit-  
14 ness is worthy of belief. Consider each witness'  
15 intelligence, motive and state of mind, and his  
16 demeanor and manner while on the stand. Consider  
17 the witness' ability to observe the matter as to which  
18 he has testified, and whether he impresses you as  
19 having an adequate recollection of these matters.  
20 Consider also any relation each witness may bear to  
21 either side of the case; the manner in which each  
22 witness might be affected by the verdict; and the  
23 extent to which, if at all, each witness is either  
24 supported or contradicted by other evidence in the  
25 case.



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Inconsistencies and Discrepancies in the testimony of a witness, or between the testimony of different witnesses, may or may not cause the jury to discredit such testimony. Two or more persons witnessing an incident or a transaction may see or hear it differently; and innocent misrecollection, like failure of recollection, is not an uncommon experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves. Another test that you can use in determining the truthfulness of credibility of a witness is to use your own good common sense in addition to these essential that I have given you. You can use your good common sense as you do in your every day experience where you must make important decisions based upon what others tell you. When you decide to either accept or ignore the statements of others you use your common sense. Your good judgment will say to you somehow or other that whatever they say does not appear to be truthful, that somehow

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or other you just do not believe what they have said.

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That is your ability to reason, your ability to deter-

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mine the truthfulness of the person you are speaking

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with. Likewise, your common sense should be used

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to determine the weight to be given the testimony

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of a witness.

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You take that same good common sense into the

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jury room, you do not leave it outside. In addition

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to what I have said, use your common sense as a test

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in exercising your good judgment and in determining

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whether or not this defendant is guilty of the crimes

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charges. It is for you to determine whether the

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witnesses in this case have testified truthfully,

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whether or not they have an interest in the case,

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what that interest may be and how great it is and

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whether or not they have told you falsehoods. This

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is all for you to determine.

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Every witness' testimony must be weighed as

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to his truthfulness. If you find any witness lied

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as to any material fact in the case, then the law

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gives you certain privileges. One of those privileges

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is that you have the right to disregard the entire

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testimony of that witness. If you find, however,

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that you can sift through that testimony and determine



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which of the testimony is true and which was false,

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then the law allows you to take the portions which

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were true and weigh it and disregard those portions

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which were false. That again is within your pre-

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rogative.

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The weight of the evidence is not necessarily

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determined by the number of witnesses testifying

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on either side. You should consider all the facts

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and circumstances in evidence to determine which of the

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witnesses are worthy of greater credence. You may

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find that the testimony of a smaller number of witnesses

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on one side is more credible than the testimony of a

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greater number of witnesses on the other side.

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You are not obliged to accept testimony, even

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though the testimony is uncontradicted and the witness

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is not impeached. You may decide, because of the

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witness' bearing and demeanor or because of the inherent

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improbability of his testimony, or for other reasons

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sufficient to you, such testimony is not worthy of

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belief.

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The Government is not required to prove the

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essential elements of the offense as defined in these

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instructions by any particular number of witnesses.

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The testimony of a single witness may be sufficient to

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convince you beyond a reasonable doubt of the existence  
of an essential element of the offense charged, if  
you believe beyond a reasonable doubt that the witness  
is telling the truth.

All available evidence need not be produced.

The law does not require the prosecution to  
call as witnesses all persons who may have been present  
at any time or place involved in the case, or who may  
appear to have some knowledge of the matters in issue  
at this trial.

(continued next page)



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### Charge of the Court

THE COURT: (continuing) Nor does the law require the prosecution to produce as exhibits all papers and things mentioned in the evidence.

However, in judging the credibility of the witnesses who have testified, and in considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to call other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

The jury will always bear in mind the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence and no adverse inferences may be drawn from his failure to do so.

### Absence of witness.

If it is peculiarly within the power of either the prosecution or the defense to produce a witness who could give material testimony on an issue in the case, failure to call the witness may give rise to an inference that his testimony would be unfavorable to that party. However, no such conclusions should be drawn by you with regard to a witness who is equally available to both parties or where the

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witness's testimony would be merely cumulative.

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"Identification of defendant."

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The evidence in this case raises the question of whether the defendant was in fact the criminal actor and necessitates your resolving any conflict or uncertainty in testimony on that issue.

The burden of proof is on the prosecution with reference to every element of the crime charged and this burden includes the burden of proving beyond a reasonable doubt the identity of the defendant as the perpetrator of the crime charged.

Identification may be made through the perception of any of the witnesses senses. It is not essential that the witness himself be free from doubt as to the correctness of his opinion. You as the jury may treat the identification testimony as a statement of fact by the witness: (1) if the witness had the opportunity to observe the accused; (2) if the witness is positive in his identification and (3) if, after cross-examination his testimony remains positive



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and unqualified. In the absence of any one of these three conditions, however, the witness' testimony as to the identity must be received with caution and scrutinized with care.

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In each count of the indictment it is alleged that a particular amount or quantity of a particular narcotic drug was involved. The evidence in the case need not establish that the amount or quantity of the narcotic drug was as alleged in the indictment, but only that some measurable amount of the narcotic drug was in fact the subject of the acts charged in the particular count of the indictment.

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You will, of course, first ascertain whether or not the substance in question is in fact heroin or cocaine as alleged; and in so doing you will consider all evidence in the case which may aid determination of that issue, including the testimony of any expert or chemist, or other witness, who may have testified either to support to dispute the allegation that the substance in question is heroin as charged.

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Opinion evidence - expert witness.

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The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we

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call expert witnesses. Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert and they also state their reasons for the opinion.

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You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that your opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

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## Testimony of Government officials.

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The probable truthfulness and believability of every witness is for you to decide; that I have already instructed you. The fact that such witnesses come before you as Government agents or policemen should not in the least change your attitude in this respect. Their testimony does not deserve either greater or lesser believability, simply because of their official status.



## Charge of the Court

Whether you do or do not believe any witness must depend upon how for you to judge that witness after you have heard the testimony and formed your own conclusions as to the witness' believability.

Impeachment - inconsistent statements or conduct.

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witnesses' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

And act of omission is "knowingly" done if done voluntarily and intentionally, not because of mistake or accident or other innocent reasons.

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## Charge of the Court

"Effect of failure of accused to testify."

The law does not compel a defendant in a criminal case to take the witness stand and testify, and no presumption of innocence or guilt may be raised, and no inference of any kind may be drawn, from the failure of a defendant to testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

"Judging the evidence."

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case, from that in which all reasonable persons treat any question depending upon evidence presented to them. YOU are expected to use your good sense; consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction, in the light of your common knowledge of the natural tendencies and inclinations of human beings.

If an accused be proved guilty beyond a reasonable doubt, say so. If not so proved guilty, say so.

Keep constantly in mind that it would be a



## Charge of the Court

violation of your sworn duty to base a verdict of guilty upon anything other than the evidence in the case; and remember as well that the law never imposes on a defendant in a criminal case the burden or duty of calling any witness or producing any evidence.

"Jury's recollection controls."

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control it during your deliberations.

## Punishment.

Now, under your oath as jurors, you cannot allow a consideration of the punishment which may be imposed upon the defendant, if convicted, to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any

## Charge of the Court

inference not warranted by the facts until proven to your satisfaction.

"Exclude sympathy and antipathy."

In reaching your verdict you are not to be affected by sympathy or antipathy for any of the parties, what the reaction of the parties or of the public to your verdict may be, whether it will please or displease anyone, the popular or unpopular or indeed, any consideration outside the case as it has been presented to you in this courtroom.

You should consider only the evidence, both the testimony and the exhibits, find the facts from what you consider to be the believable evidence, and apply the law as I now give it to you to those facts. Your verdict will be determined by the conclusion thus reached, no matter whom the verdict helps or hurts.

"Unanimous verdict."

Now, in this type of case there must be a unanimous verdict, that means all twelve of you must agree, and it goes without saying that it becomes incumbent upon you to listen to one another and to argue out the points amongst yourselves in order to determine in good conscience whether your fellow jurors' argument is one commensurate with yours or



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whether at least you can with good conscience agree with him. You have no right to stubbornly and idly sit by and say "I'm not talking to anyone," "I'm not going to discuss it" because people with common sense and the ability to reason must communicate, they must communicate their thoughts. So, anything which appears in the record on about which one of you may not agree, talk it out amongst yourselves and then if you can't agree as to what is in the record, well, you can ask the Court to have that portion of the testimony read back to you. You may do so by knocking on the door and giving a note in writing to the U.S. Marshal who will then present it to the Court, and I will then bring you into the courtroom.

The foreman will preside over your deliberations and will be your spokesman here in Court.

As to the form of verdict; as to Count 1, it's not guilty or guilty; Count 2, guilty or not guilty; as to Count 5, guilty or not guilty; as to Count 6, not guilty or guilty.

Now, you will have in the jury room with you to use during your deliberations a copy of the indictment as to the defendant Paul Williams, and you will also have all the evidence which has been submitted

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in this case. You may use these during your  
deliberations.

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At this time, the Alternate Juror No. 1 and  
No. 2 are excused and discharged with the thanks of  
the Court. You are discharged from further service,  
you may go into the jury room and take your things  
and leave.

(Whereupon Alternate Jurors were excused.)

THE COURT: Any exception to the charge?

MR. KELLY: No exception.

MR. ROCCO: None, your Honor.

THE COURT: The jury may go out and deliberate.

(Whereupon two U.S. Marshals were sworn in by  
the Clerk of the Court.)



CERTIFICATE OF SERVICE

Feb 2, 1977

I certify that a copy of this brief and appendix  
has been mailed to the United States Attorney for the  
Eastern District of New York.

Nathan Hilberman